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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

**UNITED STATES OF AMERICA,**

Plaintiff,

**WALKER RIVER PAIUTE TRIBE,**

Plaintiff, Intervenor,

**v.**

**WALKER RIVER IRRIGATION DISTRICT, a  
corporation, et al.,**

Defendants,

**UNITED STATES OF AMERICA WALKER  
RIVER PAIUTE TRIBE,**

Counterclaimants,

**v.**

**WALKER RIVER IRRIGATION DISTRICT, et  
al.,**

Counterdefendants.

Case No.: 03:73:cv-127-ECR-RAM  
In Equity No. C-125-ECR  
Subfile No. C-125-B

**CALIFORNIA STATE  
AGENCIES' PRELIMINARY  
LEGAL THEORIES**

1 Pursuant to the Court's August 20, 2007 Order, the California Department of Fish and  
2 Game and the California State Water Resources Control Board (California State Agencies)  
3 submit the following preliminary legal theories applicable to this matter.<sup>1/</sup> This filing is intended  
4 to assist the parties in identifying threshold issues, but is not all inclusive or dispositive of the  
5 California State Agencies' legal positions. Accordingly, the California State Agencies reserve  
6 the right to change these theories or to assert additional or different legal theories during the  
7 pendency of this case.

8 The California State Agencies have essentially three interests in the C-125 litigation: a) as  
9 proprietary water right holders in the Walker River Basin; b) California as a sovereign entity  
10 with responsibility for regulating California water rights, for preventing the waste and  
11 unreasonable use of water, and for protecting public trust resources; and c) California as a  
12 sovereign entity with an interest in the apportionment of interstate waters. Only the first interest,  
13 the California Agencies' interest as water right holders is currently being litigated in this  
14 subproceeding before the United States District Court.

15 The California State Agencies are proprietary water right holders in the Walker River  
16 Basin. In the C-125-B proceeding, which involves the Walker River Paiute Tribe's (Tribe)  
17 claims against all water users on the Walker River, the Tribe has identified the California  
18 Department of Fish and Game, the California State Water Resources Control Board, and the  
19 California Department of Parks and Recreation as counterdefendants. Two of these state  
20 agencies, the Department of Fish and Game and the Department of Parks and Recreation, hold  
21 California water rights under various doctrines of California law, including riparian rights,  
22 pre-1914 appropriative rights, and post-1914 appropriative rights. The State Water Resources  
23 Control Board holds state-filed applications that could be permitted and perfected as post-1914

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26 1. The California Department of Water Resources also has appeared before this Court and  
27 participated in the court-ordered mediation efforts. The Department represents the State of  
28 California for purposes of administering the terms of any compact regarding the distribution and use  
of interstate waters. (Cal. Wat. Code, § 123.)

1 appropriate rights.<sup>2/</sup> Some, but not all, of these rights have been adjudicated under the Walker  
 2 River Decree.

3 The California State Agencies do not take a position on the Tribe's federal reserved right  
 4 claims at this time, but may do so as the litigation proceeds and more information about those  
 5 claims becomes available. To the extent, however, that the water rights subject to the Walker  
 6 River Decree were fully adjudicated by this Court, those rights established in the Decree are final  
 7 under the doctrine of *res judicata*. With respect to California water rights that are not  
 8 established under the Decree, but that are established under California law, the California law  
 9 regarding priority should apply.

10 At this time, it is unclear whether and to what extent the Tribe's claims may involve the  
 11 State of California's interests as a sovereign entity; accordingly, the State of California reserves  
 12 the right to further address those issues as they arise. The State of California is a sovereign  
 13 entity with regulatory authority over water rights in its jurisdiction and functions also as *parens*  
 14 *patriae* to protect the rights of its citizens. California has an interest in seeing that the priority,  
 15 season, and amounts of water rights in California are recognized and served. California also has  
 16 the obligation to protect public trust resources and to prevent the waste and unreasonable use of  
 17 water. This applies to California rights subject to the Decree and any other water rights  
 18 recognized under California law. This Court recognized California's role in administering water  
 19 rights when it appointed the California State Water Resources Control Board as Special Master  
 20 with responsibility for reviewing proposed changes in the point of diversion, place of use, or  
 21 purpose of use, and for processing compliance applications, in the exercise of water rights in  
 22 California that have been established by the Walker River Decree.

23 In addition to the proprietary interests of the California State Agencies, California has a

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 25 2. See generally Cal. Wat. Code, § 10500 et. seq; *El Dorado Irr. Dist. v. State Water*  
 26 *Resources Control Bd.* (2006) 142 Cal.App.4th 937, 946-947 [48 Cal.Rptr.3d 468, 474-475]. When  
 27 a permit is issued on a state-filed application, the State Water Resources Control Board will assigned  
 28 it to an entity that will pursue the application and carry out any project permitted under the  
 application. (Cal. Wat. Code, §§ 10504-10504.1.) Thus, the State Water Resources Control Board  
 holds these state-filed applications as part of its responsibility for administering California water  
 rights.

1 sovereign interest in the apportionment of the interstate waters of the Walker River. Like  
2 California, Nevada is a party with an interest in the waters of the Walker River. Under Article  
3 III, § 2. cl. 2 of the Constitution and 28 U.S.C. § 1251 subdivision (a)(1), the United States  
4 Supreme Court has original and exclusive jurisdiction over “All controversies between two or  
5 more States...” An action between the states over the interstate waters may be a controversy  
6 falling within the United States Supreme Court’s original and exclusive jurisdiction. However,  
7 at this time it is unclear whether the Tribe’s claims require consideration of these issues, and  
8 California thus reserves the opportunity to further develop its legal theories as the litigation  
9 proceeds.

10 Dated: December 28, 2007

11 Respectfully submitted,

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